

¹ Docket No. 19-0995 (issued December 3, 2019).

impairment to the right leg, and lumbar spondylosis. In December 1975, appellant retired from the employing establishment due to disability.²

On August 11, 2015 and July 26, 2017 appellant filed a claim for compensation (Form CA-7) for a schedule award due to a cervical condition and submitted medical evidence in support of his claim.

In a September 9, 2015 development letter, OWCP indicated that appellant's claim had been accepted for tear of medial meniscus of the knee, bilateral; cervical spondylosis without myelopathy; lumbosacral spondylosis without myelopathy; displacement of lumbar intervertebral disc without myelopathy; lateral collateral ligament sprain of knee, bilateral; old bucket handle tear of medial meniscus, left; and non-traumatic rupture of other tendon, bilateral. It requested that appellant provide a medical report, which included an impairment rating utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*). OWCP afforded him 30 days to submit the requested information.

Appellant subsequently submitted a May 5, 1975 OWCP claim summary form report, which indicated that appellant's accepted conditions included left knee tear of the medial meniscus, consequential impairment to the right leg and lumbar spondylosis.

OWCP also received a printout from the Integrated Federal Employees' Compensation System (iFECS) case query, which was last updated on March 14, 2011. It listed appellant's accepted conditions as tear of the medial meniscus of the knee, cervical spondylosis without myelopathy, knee sprain, old bucket handle tear of the medial meniscus, non-traumatic rupture of other tendon, lumbosacral spondylosis without myelopathy, and displacement of lumbar intervertebral disc without myelopathy.⁴

Appellant also submitted a Eligibility Response Form dated November 2, 2012. It indicated that he was eligible for compensation for the following conditions: bilateral lateral ligament sprains; left old bucket tear of the medial meniscus; bilateral non-traumatic tendon ruptures of the neck; lumbosacral spondylosis; lumbar disc displacement; bilateral tears of the medial meniscus of the knees; and cervical spondylosis.

By decision dated April 18, 2018, OWCP denied appellant's claim for a schedule award. It found that the evidence of record failed to establish that his claim was accepted for a cervical condition and, thus, he was not entitled to a schedule award for his cervical condition.

² On March 5, 1974 OWCP granted appellant a schedule award for 20 percent permanent impairment of the left lower extremity. The award ran for 57.6 weeks from January 5, 1976 through February 11, 1977. Between 1989 and 1996, OWCP granted appellant additional schedule award compensation for permanent impairment to his bilateral lower extremities for a total of 64 percent permanent impairment of the left lower extremity and 45 percent permanent impairment of the right lower extremity.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ The ICD 9 codes on the iFECS case query no longer include cervical spondylosis without myelopathy as an accepted condition.

On May 11, 2018 appellant requested a review of the written record before a representative from OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated August 31, 2018, OWCP's hearing representative vacated the April 18, 2018 decision and remanded appellant's case for further development.

In an October 3, 2018 decision, OWCP again denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of appellant's bilateral upper extremities as a result of his accepted July 2, 1974 employment injury. It noted that OWCP's documentation, which reflected that appellant's claim was accepted for cervical spondylosis, must have been incorrectly added to his case file.

On October 19, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. By decision dated March 6, 2019, OWCP's hearing representative affirmed the October 3, 2018 decision.

Appellant filed an appeal with the Board. In a decision dated December 3, 2019, the Board set aside the March 6, 2019 OWCP decision and remanded the case to OWCP. The Board found that the March 6, 2019 OWCP decision constituted a rescission of the acceptance of appellant's cervical condition and, accordingly, that OWCP had failed to follow its established procedures for rescission. The Board directed that on remand OWCP follow its procedures and issue a proper decision regarding the rescission of the acceptance of appellant's claim for a cervical condition. The Board further directed that, following such other development, OWCP shall issue a *de novo* decision on appellant's schedule award claim.

In a January 14, 2020 letter, OWCP requested that appellant provide any correspondence sent directly to him that formally accepted his claim for a cervical spine condition.

In a January 22, 2020 memorandum of telephone call (Form CA-110), appellant informed OWCP that he had submitted everything regarding the formal acceptance for his cervical condition.

Appellant subsequently submitted OWCP's September 9, 2015 schedule award development letter.

By decision dated March 25, 2020, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body as a result of his accepted July 2, 1974 employment injury. It found that the evidence of record was insufficient to establish that appellant's claim was accepted for a cervical injury.⁵

The Board has duly considered the matter and finds that this case is not in posture for decision as OWCP did not comply with the Board's instructions as set forth in its December 3, 2019 decision.⁶ By that decision, the Board found that OWCP failed to follow its established

⁵ The decision also noted that, while the Board had previously determined that the March 6, 2019 decision had constituted a rescission of appellant's cervical condition, it was not a rescission as appellant's claim had not been formally accepted for a cervical condition.

⁶ See *Order Remanding Case, B.O.*, Docket No. 19-0015 (issued July 29, 2019); see also *Order Remanding Case, K.N.*, Docket No. 17-771 (issued August 9, 2018).

procedures when it rescinded the acceptance of appellant's claim for a cervical condition and did not inform appellant correctly and accurately of the basis of its rescission decision.⁷ The Board concludes that OWCP prematurely issued a *de novo* decision regarding appellant's schedule award claim prior to issuing a proper decision rescinding the acceptance of appellant's claim for a cervical condition.⁸

As OWCP did not follow its procedures to properly rescind the acceptance of appellant's claim for a cervical condition prior to issuing its March 25, 2020 schedule award decision, the case must again be remanded to OWCP for a proper decision with regard to any rescission proposed by OWCP. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim.

IT IS HEREBY ORDERED THAT the March 25, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: May 4, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁷ OWCP procedures require a proposed and final decision rescinding the original finding. These procedures further provide that a rescission decision should contain a brief background of the claim, discuss the evidence on which the original decision was based, and explain why OWCP finds that the decision should be rescinded. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.19(b) & (d) (February 2013).

⁸ See *Order Remanding Case, C.C.*, Docket No. 18-0079 (issued May 2, 2018).